

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File Number EB-02-KC-301
Midwest Tower Partners, LLC	)	
	)	NAL/Acct. No.200232560007
Owner of Antenna Structure 1045073	)	
	)	FRN Number: 0006-1628-53
Milwaukee, WI	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: June 4, 2002

By the Enforcement Bureau, Kansas City Office

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture, we find that Midwest Tower Partners, LLC (“Midwest”) willfully violated Section 17.50 of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to clean or repaint the antenna structure as often as necessary to maintain good visibility. We conclude that Midwest Tower Partners, LLC is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On May 1, 2002, an agent of the FCC Enforcement Bureau’s Kansas City Field Office inspected a Midwest antenna structure with registration number 1045073 located at 41° 42’ 20” N latitude & 091° 28’ 08” W longitude, 1.24 miles east of Iowa City, Iowa. Both the FCC Rules and the FAA specifications for this structure required the structure to be painted. The agent observed the antenna structure’s black, unpainted coaxial cable on all three legs of the structure over its entire length, obscuring the paint.

**III. DISCUSSION**

3. Section § 17.50 of the Rules states that antenna structures requiring painting under this part shall be cleaned or painted as often as necessary to maintain good visibility. Section 17.2(a) of the Rules provides that the term “Antenna structure” includes “the radiating and/or receive system, its supporting structures and any appurtenances mounted thereon.”<sup>2</sup> On May 1, 2002, Midwest failed to maintain good visibility of its antenna structure number 104573 located near Iowa City, Iowa. Even though the metallic supporting structure of the antenna structure was

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<sup>1</sup> 47 C.F.R. § 17.50

<sup>2</sup> 47 C.F.R. § 17.2(a)

painted, the unpainted, black coaxial cable mounted on the outside of the supporting structure obscured the visibility of the paint.

4. Based on the evidence before us, we find that, on May 1, 2002, Midwest Tower Partners, LLC willfully<sup>3</sup> violated Section 17.50 of the Commission's Rules.

5. Pursuant to Section 1.80(b)(4) of the Commission's Rules, the base forfeiture amount for failure to comply with prescribed marking is \$10,000.<sup>4</sup> Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), requires us to take into account "...the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."<sup>5</sup> Considering the entire record and applying the statutory factors listed above, this case warrants a \$10,000 forfeiture.

#### **IV. ORDERING CLAUSES**

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,<sup>7</sup> Midwest Tower Partners, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.50 of the Rules.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Midwest Tower Partners, LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration Number (FRN) referenced above, and should note the NAL/Acct. No. referenced above.

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Technical & Public Safety Division, and MUST INCLUDE the FRN and the NAL/Acct. No. referenced in the letterhead above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting

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<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>4</sup> 47 C.F.R. § 1.80(b)(4)

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D)

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operation Group, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>8</sup>

12. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Midwest Tower Partners, LLC at 12323 W. Fairview Ave. Milwaukee, Wisconsin 53226.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney  
District Director  
Kansas City Office

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<sup>8</sup> See 47 C.F.R. § 1.1914.